

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Comcast Corporation,	)	MB Docket No 14-57
Time Warner Cable Inc., Charter	)	
Communications, Inc., and Spinco	)	
To Assign and Transfer Control of	)	
FCC Licenses and Other Authorizations	)	
	)	
	)	
	)	

**COMMENTS OF  
The City of Eagan, Minnesota**

The City of Eagan, Minnesota is the 9<sup>th</sup> largest city in Minnesota with approximately 66,000 residents. The Eagan City Council on behalf of residents of the City of Eagan submits these comments in response to the notice for comments on the above applications, released July 24, 2014.

Comcast currently holds a cable franchise with the City, and Eagan operates a local public access studio and station called Eagan Television, or E-TV. Together with the City of Burnsville (Minnesota), Eagan manages six PEG channels so that residents may watch local high school athletic contests, enjoy local parades and music in the park, view weekly City Council and Advisory Commission meetings, and watch Dakota County Board and local school board meetings and educational content from at least three school districts our students attend.

E-TV is increasingly focused on creating two-way communication opportunities for Eagan residents to interact with local decision makers. Our award winning "Budget Connect

Virtual Budget Open House” is televised live on E-TV and allows residents and business owners to ask their own questions directly, in real time, of the Mayor, the City Administrator and Finance officials.<sup>1</sup>

### **The FCC should not approve the Comcast-Time Warner-Charter transactions**

The City of Eagan requests that the FCC not approve the Comcast –Time Warner – Charter transactions as currently presented. The Comcast/Time Warner merger would not enhance competition. Indeed, Comcast is already the largest vertically integrated distributor of information in the country.<sup>2</sup> Further, and based on the distinct lack of information provided thus far in response to direct inquiries from affected local franchise authorities including the City of Eagan—the spin-off of Comcast’s Minnesota territory to an untested entity, known as Midwest Cable (managed by Charter Communications), would likely not be in the public interest of Minnesotans currently served by Comcast.<sup>3,4</sup>

The further consolidation of markets would neither enhance local area competition nor, as the record will show, substantially benefit Eagan cable subscribers. If, and only if, the FCC disregards the significant local concerns of affected franchise areas and the public they serve, then significant, binding, and verifiable conditions should apply to the transactions.

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<sup>1</sup> The League of Minnesota Cities awarded its highest award for Engaging Citizens in the Budget Process to the City of Eagan and Eagan Television for its innovative Budget Connect Virtual Open House, conducted Nov. 18, 2013. Eagan was the recipient of the 2014 City of Excellence award at the LMC’s annual conference, June 18, 2014.

<sup>2</sup> “Captive Audience: the Telecom Industry and Monopoly Power in the New Gilded Age,” by Susan Crawford, Yale University Press, copyright 2013, p. 1.

<sup>3</sup> Emphasis should be on “information provided *thus far*.” As of the FCC deadline for filing comments, numerous Minnesota cities believe they have not been provided adequate information to evaluate the requested Comcast transfer of ownership to Midwest Cable. The companies disagree, but on August. 22, 2014 agreed to extend the Form 394 deadline until December 15, 2014. Eagan remains hopeful such information will be provided but must comment based on the record received thus far.

<sup>4</sup> “It is unclear how consumers would benefit from simply having 3 million subscribers under a company of a different name,” said Karl Bode of Broadband/DSL reports on March 3, 2014.

The focus of Eagan's comments are to raise the public policy question of whether it is in the Minnesota public's interest (Eagan included) for Comcast to be allowed to spin off the Twin Cities market for cable, Internet and phone service? If Comcast is allowed to acquire the Time Warner markets, and must spin off a requisite number of subscribers, should not Comcast be required to divest in one of its other already highly consolidated markets that abuts competitors with the financial wherewithal to offer competitive services? The spinoff of Eagan subscribers arguably places its residents, businesses and minorities at a competitive disadvantage.

To understand Eagan's concerns it is important to note that City has been a technology magnet for the region. Not only is it home to one of the largest software developers in the state<sup>5</sup>, but another Eagan firm has added 300 information technology management and analyst jobs here since 2012.<sup>6</sup> In fact, Eagan's rate of technology job growth over the last decade has far out-paced the region.<sup>7</sup> To keep and attract technology jobs, Eagan employers have particularly reached out to minority populations. From 1990 until now, Eagan's Asian population has had the single largest jump of any minority, nearly 165%.<sup>8</sup>

Eagan employers need their employees to have round-the-clock access to perform their high tech jobs. This means Eagan residents must have first rate connectivity at their homes to perform their jobs and work remotely. If Eagan employers are to continue to attract the best and the brightest millennial-age workers, from here or around the world, our broadband connections,

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<sup>5</sup> Thomson Reuters Legal provides solutions software solutions to law firms worldwide and the most advanced legal research engine. It is Eagan's largest employer with 6,700 employees.

<sup>6</sup> Prime Therapeutics is a certified Pharmacy Benefits Manager for Blue Cross Blue Shield and its more than 25-million members.

<sup>7</sup> According to Minnesota Department of Employment and Economic Development labor market statistics, Eagan had a 15.6% growth in high wage professional, scientific and technical jobs from 2000-2010 while the Twin Cities as a whole averaged a -5.7% decline.

<sup>8</sup> Source: U.S. Census Data, 1990, compared with three-year American Community Survey data, 2010-2012, as reported by the Metropolitan Council.

speeds, and robust cable program offerings must be world class, with an ownership capable of making sustained investments and bringing new technology to market.

Indeed Comcast's own regulatory filing of its Public Interest Statement notes that it is a "leading provider of video, high-speed Internet, digital voice, and other **next generation services** and technologies . . ." <sup>9</sup> So the real question is what are Midwest Cable's and Charter Communication's relative abilities to provide, manage and continue to invest in those next generation services that will continue to serve the public interest and necessity of Eagan residents? Midwest Cable is a brand new company with no operating history and few employees. We do not know if it was created simply as a holding company until Charter Communications is ready to acquire full ownership of its assets, as the deal allows, a few years from now. This question is particularly acute because Charter Communications, having only recently emerged from bankruptcy, and even before it takes on new debt, was already identified by some financial analysts as at risk for bankruptcy again. <sup>10</sup>

Even before its proposed acquisition of Time Warner markets, Comcast already has a dominant 31.5% share of the cable market. <sup>11</sup> Comcast's revenues, and thus its resources to make those investments in next generation services, are more than eight times that of Charter Communications. <sup>12</sup> Meanwhile Charter's 2014 share of broadband Internet subscribers is

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<sup>9</sup> June 5, 2014, joint Comcast and Charter filing with the FCC, Public Interest Statement, p. 2 Section II. Emphasis added.

<sup>10</sup> According to the Altman-Z Score, described as an accurate model for forecasting failure up to two years prior to distress, industrial corporations with a score of less than 1.81 are in the distress zone. Charter's Z-Score is 0.88 signifying it is in distress zones and indicating "bankruptcy possibility in the next two years." See: [http://www.gurufocus.com/term/rank\\_balancesheet/CHTR/Financial%2BStrength/Charter%2BCommunications%2BInc](http://www.gurufocus.com/term/rank_balancesheet/CHTR/Financial%2BStrength/Charter%2BCommunications%2BInc) . Charter also has a lower credit rating from both Moody's Investment Service and Standard & Poors, which also rate probability of default.

<sup>11</sup> "Top Cable Service Providers, 2012," *Market Share Reporter*. Ed Robert S. Lazich. 2014 ed. Detroit: Gale, 2014. *Business Insights: Essentials*.

<sup>12</sup> Top Fortune 500 Companies in Telecommunications, 2012. Fortune 500 (annual publication) May 20, 2013, p. F-39.



significantly *below* its own subscriber numbers in 2012. Comcast's manages an Internet subscriber base approximately four times as large.<sup>13</sup>

All of these concerns are before we even get to the matter of an unknown, untested, spin off company generically called Midwest Cable. At this point the City of Eagan and numerous other local franchise authorities have been unable to assess the wherewithal and ability of "Midwest Cable" to serve the needs and interests of Eagan residents and subscribers.<sup>14</sup> Some 80 questions have been posed to Comcast as it attempts to transfer ownership to the spin off company. Answers have been inadequate at best and mostly not forthcoming. The questions raised by the City have addressed routine operational issues, customer service matters and the financial qualifications for the proposed transferee, Midwest Cable.<sup>15</sup>

At this point in our review we are challenged by the fact that we still do not know what entity will actually be running the cable system if the transactions are ultimately closed. We understand that Midwest will ultimately own the cable system, although it is not clear if Midwest will have any operational employees. Charter Communications ("Charter") will apparently be engaged via a "Charter Services Agreement" that Comcast has not yet shared, and that agreement will apparently authorize Charter, not Midwest, to run the technical and operational

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<sup>13</sup> Number of broadband Internet subscribers in the United States from 2011 to 2014, by cable provider, <http://www.statista.com/statistics/217348/us-broadband-internet-suscribers-by-cable-provider/>

<sup>14</sup> See League of Minnesota Cities letter also endorsed by 48 municipalities and LFAs including Eagan. The City of Eagan agrees with and hereby incorporates objections noted in the League letter dated August 25, and with additional comments and conditions suggested by MACTA, the Minnesota Association of Community Telecommunications Administrators, of which Eagan is a member. In granting the Form 394 review extension referred to in footnote #3, Comcast said it is hopeful that it will "facilitate a more constructive" review that allows Midwest Cable to "clarify and further explain its qualifications." However, Comcast also claims that the concerns outlined above "are neither reasonable nor germane."

<sup>15</sup> By letter of August 22, Comcast now asserts the new Midwest Cable will assets of \$4.5 billion revenues do not equate to earnings, cash flow or financial capability to operate. First, the \$4.5 billion is revenue and is not Midwest Cable "assets." The amount was arrived at by an allocation from Comcast. No supporting documentation has been received support for the amount. The other financial information identified as Midwest are also unsupported allocations from Comcast. When asked about the "extensive service support from Charter Communications", our consultants were told (1) that the agreement has not been finalized and (2) that the services to be provided had not been identified.

side of the cable system. However, it is not clear if it will be Charter's employees or Midwest's employees physically present in the field and working in the City. Nor is it clear whether existing Minnesota Comcast staff and personnel (customer service, technical personnel, government relations) will be retained by Midwest, Charter, or at all.

Of particular concern, Comcast and Midwest have not yet provided requested financial information related to Midwest's financial qualifications to own and operate the cable systems serving the City. Comcast has asserted that all required information has already been provided.<sup>16</sup>

Not only are municipalities and local franchise authorities having to spend extra time and expense to gain answers to these appropriate due diligence questions to find out who we will be dealing with on the ground, what capabilities and qualifications will they have, but consumers—the public we serve—have no answer at all to several questions:

- Will Comcast customers in Minnesota have to give up their email addresses?
- Will they be required to get a new modem and at whose expense?
- Will they be able to watch the same local channels as they do now and will Midwest Cable have the programming relationships in place to see the same breadth of national sports, movies and entertainment with the same level of On Demand and Streaming capability as they now enjoy from Comcast/Xfinity?

Given the uncertainty, given the enormous technological edge Comcast enjoys in the Minnesota market, given its national programming reach, the City of Eagan submits that it is not in the public interest to ask Eagan and Minnesota consumers to take a step back in the provision of vital communications services and technologies.

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<sup>16</sup> See footnote #14.

Despite Comcast's well documented customer service challenges<sup>17</sup>, based on the evidence at hand Eagan would be better served by Comcast rather than a combination of 1) a brand new company with no operating history (Midwest); and 2) a company which may handle the day to day operations of the Eagan system, but not actually own the system or control the ultimate management decisions impacting the system (Charter).

While offering Comcast no "free pass," the chart on the next page reviews additional factors we believe the FCC should evaluate in determining whether it should deny the Comcast – Time Warner – Charter transactions.

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<sup>17</sup> Customers have now taken to recording their phone calls with Comcast customer service representatives (CSRs) to prove they have been charged for services they were told would be free, or have been unable to cancel services or put on hold for three hours. In Minnesota local franchise administrators report a significant jump in requests for escalated complaints as local customer service calls were routed to CSRs no longer in Minnesota and in some cases located outside of 50 U.S. states. The Eagan City Council held a nearly two hour public hearing in February 19, 2013 to respond to consumer complaints about Comcast.



Public Interest Tests	Not in the Public Interest	Notes
Will the proposed spin off of Comcast holdings in MN <i>result in improved customer service?</i>	Cannot evaluate Midwest Cable based on the lack of info provided.  Not in the public interest to have to conduct a new Needs Analysis regarding a franchise with Midwest Cable.	Despite Comcast's customer service issues, or perhaps because of them, the City of Eagan has spent considerable time and money to prepare for negotiations with Comcast on a new franchise with improved customer service standards
Can the spun off company make technology investments equal to what Comcast has made in the Minnesota market?	The Minnesota market loses out on Comcast's substantial investments; No evidence Midwest Cable or Charter can/will make those.	Given the close link between Internet, phone and cable services with additional wireless connections, the MN public should not be asked to take a step back.
What is the financial condition of the spun off company and its day-today operator? Can that entity live up to its obligations?	Charter went bankrupt before and has at least one rating placing it in the danger zone.; Midwest Cable's capitalization and plans to operate are unclear.	Comcast is clearly the larger and more able company to serve Eagan residents. If the spun off company is unable to meet its obligations PEG community media productions on the local level are endangered.
Will the proposed spun off company have a negative impact on consumers?	Do consumers and businesses have to get new email addresses or modems? No evidence that customer service records will transfer into the Charter system without customers experiencing a harder time trying to correct current issues.	Public disadvantaged
Is there a negative impact on the City/Franchise holder?	Eagan's franchise expires in January, 2015. Negotiations would have to start all over with a new company and costly studies to determine capabilities and consumer needs of the new company.	City budgets and funds set aside for PEG programming are negatively impacted.
What is the impact on the Federal Regulatory Map?	Concentrated owners in regions of country without competition	Rate payers lack options

As stated previously, the City believes that allowing Comcast to shed the Minnesota market is not in the public interest. Should the Commission feel otherwise, then it is imperative



that clear, significant, binding, and verifiable conditions should apply to the transactions to protect the public interest.<sup>18</sup>

A partial list of conditions in the public interest would include such things as:

- 1) Restoration of local rate authority and the dissolution of effective competition orders for newly transferred franchises for a period of five years
- 2) Protection of the ability to viably produce local public access programming, by requiring a written agreement ensuring that PEG funds may be spent at the discretion of local franchise authorities on PEG activities and not restricted to capital equipment.
- 3) A condition or stipulation that PEG programming listings will be of comparable specificity as listings for commercial programming and the technology to provide PEG channel listings will be provided at no charge to local franchises for the life of the franchise.
- 4) A stipulation that municipalities have and shall retain exclusive authority over local Rights of Way.
- 5) A condition ensuring HD delivery of all PEG programming using compression rates and functionality equivalent to that employed by the operator to deliver the primary signals of local commercial broadcast stations on its cable system.

## CONCLUSION

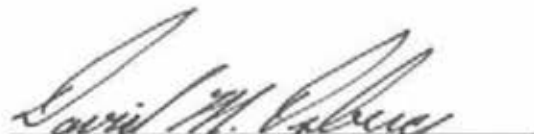
The City of Eagan sincerely thanks the Commission for the opportunity to make comments on the Comcast – Time Warner – Charter transactions. The City prides itself on its long history of working productively with businesses that work with it in a spirit of cooperation and good faith. Cable and telecommunications companies generate substantial profit from use of the Public Rights of Way. The imposition of reasonable and publicly beneficial conditions on cable mergers and franchise transfers is not unreasonable. The City of Eagan requests that the FCC not approve the Comcast – Time Warner – Charter transactions as currently presented for the reasons herein stated. In the alternative, the City requests that reasonable and appropriate conditions as described herein be placed on all three companies to protect the public interest.

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<sup>18</sup> See Crawford, "Captive Audience," pages 210-211 regarding conditions.

August 25, 2014

Respectfully Submitted by the City of Eagan, MN

A handwritten signature in cursive script, reading "David M. Osberg", written over a horizontal line.

City Administrator, David M. Osberg

## Top Fortune 500 Companies in Telecommunications, 2012

Ranked by: Revenue, in millions of dollars

AT&T Inc.	\$127,434
Verizon Communications Inc.	\$115,846
Comcast Corp.	\$62,570
Sprint Nextel Corp.	\$35,345
The DirecTV Group Inc.	\$29,740
Time Warner Cable Inc.	\$21,386
CenturyLink Inc.	\$18,376
Disn Network Corp.	\$14,266
Liberty Global Inc.	\$10,605
Charter Communications Inc.	\$7,504

Source: "Top Fortune 500 Companies in Telecommunications, 2012." *Business Rankings Annual*. Ed. Deborah J. Draper. 2014 ed. Detroit: Gale, 2014. *Business Insights: Essentials*. Web. 20 August 2014.

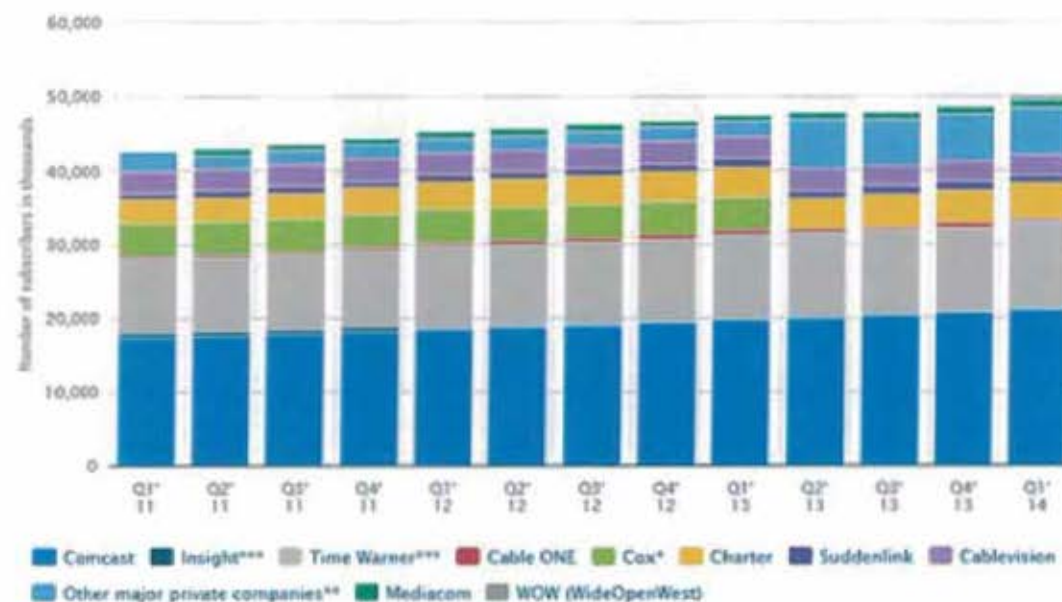
## Top Cable Service Providers, 2012

Market shares are shown in percent.

Comcast Corp.	31.50
Time Warner Cable Inc.	13.70
Cox Enterprises Inc.	11.60
Charter Communications Inc.	4.90
Cablevision	2.70
Verizon Communications	2.70
Other	33.30

Source: "Top Cable Service Providers, 2012." *Market Share Reporter*. Ed. Robert S. Lazich. 2014 ed. Detroit: Gale, 2014. *Business Insights: Essentials*. Web. 20 August 2014.

Number of broadband internet subscribers in the United States from 2011 to 2014, by cable provider (in 1,000s)



Source: <http://www.statista.com/statistics/217348/us-broadband-internet-susbcribers-by-cable-provider/>